

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. Prior to January 1, 2000, the period at issue herein, the petitioner's husband received \$664 a month in Social Security benefits.

3. During 1999 the petitioner received ANFC for herself and the two grandchildren as a three person household. In or around December 1999, the Department discovered that it had been incorrectly determining the amount of the household's income countable for ANFC. The Department had failed to attribute the petitioner's husband's income as available to the three ANFC household members. Had it done so, the household would have been over income for ANFC.

4. However, under the ANFC regulations (see infra) a non-parent caretaker relative can elect whether or not to be included in an ANFC household containing eligible children. The Department admits that it did not inform the petitioner of this option until December 1999. Had the petitioner chosen this option (which she did as of January 1, 2000) the grandchildren would have received a reduced amount of ANFC in 1999 based on a two person household, but with the income of the petitioner's husband not counted. The Department admits that under these circumstances the amount of the ANFC overpayment to the household should be determined as the difference between the amount the household actually received as a three person household (with the income of the petitioner's husband erroneously not having been counted) and the amount the children would have received had their benefits been calculated as a two

person household (without counting the petitioner's husband's income). The amount of the ANFC overpayment thus calculated is \$1,678.

5. When the petitioner was informed of the Department's error and elected to no longer be included in the grandchildren's ANFC grant, she lost the basis of her categorical eligibility for Medicaid. It appears, however, that the petitioner has been found eligible for VHAP.

6. It does not appear that the amount of the ANFC overpayment is in dispute. The petitioner takes issue with the Department's treatment of her husband's income and with the determination that any overpayment of ANFC must be recouped from ongoing benefits at a rate of ten percent.

ORDER

The Department's decisions is affirmed.

REASONS

W.A.M. § 2252 provides that unearned income countable for ANFC includes "Social Security". W.A.M. § 2242.5(2) provides that a non-parent "caretaker" of eligible children can elect whether or not to seek inclusion in the children's ANFC grant.

If the caretaker elects to be included, the regulation provides that "his or her need must be established".

W.A.M. § 2242.5(3) provides that if the caretaker who seeks assistance has a spouse, "then the income of the spouse . . . must be counted as available to the caretaker . . ." Based on the above provisions, the Department correctly determined that the petitioner should not have been included in her grandchildren's ANFC grant without counting her husband's Social Security benefits as available income to her.

W.A.M. § 2234.2 provides, in part: "Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment." See also 45 C.F.R. § 233.20(a)(13). The same regulation also provides that recoupment shall be limited to overpayments that took place within 12 months of discovery. The rate of recoupment for households whose only income is ANFC (presently, like that of the petitioner's grandchildren) is 10 percent of the grant amount unless, as here, the "overpayment results from Department error or oversight", in which case "recoupment will equal 5 percent of the grant amount".

There is no provision in the Vermont regulation for reducing the rate of recoupment based on hardship or any other grounds. The Federal regulations provide that states must recoup at a rate of no more than 10 percent. 45 C.F.R. § 233.20(a)(13)(A)(2). However, they do not place any other restrictions on the states regarding recoupment rates. Thus, under the Federal regulations states could elect to reduce recoupment rates based on hardship, or any other factor. Clearly, however, they are not required to do so. Vermont, in its regulations (see supra) has clearly elected not to do so.

For all the above reasons, the Department's decisions in this matter must be affirmed. 3 V.S.A. 3091(d) and Fair Hearing Rule No. 17.

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